

OW 2003-0063-006
1.31.24

Kings
Mosquito Abatement District

Board of Trustees

Bobby C. Lee, Lemoore
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September 11, 2003

SEP 11 2003

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Water Docket
Environmental Protection Agency,
Mail Code 4101T
1200 Pennsylvania Avenue, NW.
Washington, DC 20460

Attention: Docket ID No. OW-2003-0063

The Kings Mosquito Abatement District, Board of Trustees appreciates the opportunity to express support for the Interim Statement and Guidance on Application of Pesticides to Waters of the United States in Compliance with FIFRA issued by the EPA on July 11, 2003.

Please find enclosed, Resolution No. 02-03 Passed and Adopted by the Board of Trustees of the Kings Mosquito Abatement District on the 9th day of September, 2003.

RESOLUTION NO. 02-03

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE KINGS MOSQUITO ABATEMENT DISTRICT EXPRESSING SUPPORT FOR THE INTERIM STATEMENT AND GUIDANCE ON APPLICATION OF PESTICIDES TO WATERS OF THE UNITED STATES IN COMPLIANCE WITH FIFRA ISSUED BY THE EPA ON JULY 11, 2003

WHEREAS, the Clean Water Act has been administered by the United States Environmental Protection Agency (EPA) for the past thirty (30) years; and

WHEREAS, the EPA has consistently held that a National Pollutant Discharge Elimination System (NPDES) permit is not required for the application of a pesticide to waters of the United States consistent with all relevant requirements of FIFRA; and

WHEREAS, there have been several decisions by the US Court of Appeals in the Ninth Circuit and the Second Circuit that have caused much confusion regarding the NPDES permit requirements for pesticides applied to waters of the US in accordance with FIFRA; and

WHEREAS, in August, 1999 the Board of Trustees of the Kings Mosquito Abatement District (District) examined the NPDES permit requirements and the *Headwaters Inc. v Talent Irrigation District* decision (US Court of Appeals, Ninth Circuit) as they apply to the products used by this District and made certain findings including a finding that no permit is required for the operations of the District regarding the applications of pesticides to waters of the United States; and

WHEREAS, on January 16, 2003, the American Mosquito Control Association submitted to the EPA a "Petition for Rulemaking Under the Clean Water Act to provide that the use of a registered mosquito larvicide or adulticide does not constitute the discharge of a pollutant from a point source to waters of the United States within the meaning of the Clean Water Act and thus does not require an NPDES permit"; and

WHEREAS, the EPA has issued an Interim Statement and Guidance on Application of Pesticides to Waters of the United States in Compliance with FIFRA (Interim Statement and Guidance) dated July 11, 2003; and

WHEREAS, the EPA Interim Statement and Guidance agrees completely with the findings of the Board of Trustees of the Kings Mosquito Abatement District; and

WHEREAS, the Office of Chief Counsel of the California State Water Resources Control Board issued an opinion dated July 25, 2003 regarding the Interim Statement and Guidance that concluded as follows: "The Interim Guidance appears to be in conflict with the holdings of the Ninth Circuit Court of Appeals and the State Water Resources Control Board should not follow the Interim Guidance"; and

WHEREAS, the State Water Resources Control Board is the regulatory body of authority for enforcement of the Clean Water Act in the State of California;

NOW, THEREFORE, BE IT RESOLVED, that the BOARD OF TRUSTEES of the

KINGS MOSQUITO ABATEMENT DISTRICT does hereby find and determine, based on the evidence in the record before the Board, as follows:

1. The Board is grateful to the US EPA for providing the Interim Statement and Guidance on Application of Pesticides to Waters of the United States in Compliance with FIFRA, dated July 11, 2003.
2. The EPA Interim Statement and Guidance does correctly and fairly interpret the NPDES requirements for the application of a pesticide to waters of the United States consistent with all relevant requirements of FIFRA in accordance with current case law.
3. The Board declares their full support and agreement with the EPA Interim Statement and Guidance.
4. The Board desires to submit this statement of support for the EPA Interim Statement and Guidance to the US EPA during the public comment period through the Federal Register.
5. The Board would ask that the EPA provide a final interpretation and guidance statement expressing the same findings contained in the Interim Statement and Guidance as soon as possible.
6. The Board is in full support of the American Mosquito Control Association's Petition for Rulemaking Under the Clean Water Act which was submitted to the US EPA on January 16, 2003 and would urge the US EPA to act on this petition immediately.

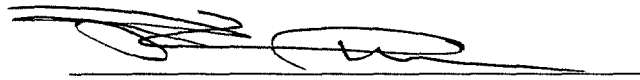
PASSED AND ADOPTED by the BOARD OF TRUSTEES of the KINGS MOSQUITO ABATEMENT DISTRICT on the 9th day of September, 2003, by the following vote:

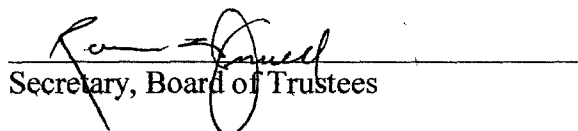
AYES: Trustees Mathews, Lee, Junell, and Giuliani

NOES: None

ABSENT: None

ABSTAIN: Draxler



President, Board of Trustees

Secretary, Board of Trustees